IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.440 OF 1994

Major Prabhakar Sidram Chilka
(retired), aged about 51 years,
occupation Profession-Retired
Army Officer resident of c/o
Giridhar Sidaram Chilka,
Block No.6, 162/22 Railway
Lines, Solapur 413 001. .... Petitioner

- Versus -

Nanasaheb Annappa Cholachgud,
aged about 61 years, Occupation
Service, residing at Block
No.9 Chilka Blocks 162/22
Railway Lines, Solapur 413 001. .... Respondent

WITH

CIVIL REVISION APPLICATION NO.444 OF 1994

Major Prabhakar Sidram Chilka
(Retired), age about 51 years,
Occu.Profession-Retd.Army
Officer, resident of c/o
Giridhar Sidram Chilka, Block
No.6, 162/22, Railway Lines,
Solapur-413 001. .... Petitioner

- Versus -

Smt. Mrudula Govind Mayabhate,
age about 60 years, Occup.
Household, r/o Block No.10,
Chilka Blocks, 162/22, Railway
Lines, Solapur-413 001. .... Respondent

Sarvasri Y.S. Jahagirdar with A.M. Kulkarni
and P.S. Dani for the Petitioner in both
the applications.

Shri K.Y. Mandlik for the Respondent in both
the applications.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 02, 2004

ORAL JUDGMENT:

1. Since common questions of law and facts arise in both the petitions, they were heard together and are being disposed of by this common judgment.

2. Heard. Perused the records. In both these petitions the petitioner challenges the judgments passed by the competent authority under Section 13A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the said Act", dismissing the applications filed by the petitioner for eviction of the respondents on the grounds specified under the said provision.

3. The eviction proceedings came to be instituted by the petitioner against the respondents on the ground that the premises are bona fide required by him for the occupation of himself and his family members and that he had retired from the Armed Forces and he does not possess any other premises at Solapur. It was the case of the petitioner (applicant) that he is a registered valuer and also an instructor of the students desirous

of getting admission in the Armed Forces. It was his further case that he was compelled to shift the residence to Solapur from Secunderabad where he was residing since the time of his retirement from the Army on account of his wife suffering from bronchial asthma due to pollen of cassia siamia trees which are found in abundance in the locality where the petitioner is presently staying. The eviction proceedings were contested by the respondents on the ground that the claim of the petitioner regarding requirement of the premises being not bona fide and that the petitioner had constructed a residential bungalow at Secunderabad hardly two years prior to his retirement and he had been staying there. In support of the case for eviction of the respondents, the petitioner examined himself and produced two certificates - one stated to be from Dr. Niphadkar and another from the Secretary of the society wherein the petitioner's bungalow is situated at Secunderabad. The certificates were in support of the alleged claim regarding the suffering of the petitioner's wife from bronchial asthma caused due to pollen of cassia siamia trees.

4. The competent authority, considering the evidence on record, held that the petitioner had failed to establish the bona fide requirement of the suit premises for the occupation of the petitioner and his family members and

therefore dismissed the eviction proceedings. The competent authority disbelieved the claim of the petitioner that his wife is suffering from bronchial asthma on account of failure to establish the same by examining the doctor or producing cogent evidence in that regard.

5. While assailing the impugned judgments, the learned Advocate for the petitioner submitted that the materials on record were sufficient to disclose the genuine need of the petitioner to shift his residence along with his family at Solapur, more particularly on account of the fact that the wife of the petitioner was suffering from bronchial asthma caused due to pollen of cassia siamia trees which are found in abundance in Secunderabad where the petitioner is presently residing as the claim in that regard was established from the certificates produced by the petitioner - one from Dr. Niphadkar, who had examined the petitioner’s wife and another from the said Secretary of the society. According to the learned Advocate for the petitioner, the fact that the area wherein the petitioner was presently residing at Secunderabad has cassia siamia trees in abundance is not being disputed and the pollen therefrom being the cause for bronchial asthma for the wife of the petitioner being clearly revealed from the certificate of the doctor, the genuine and bona fide need of the premises

for occupation of the petitioner and his family members was clearly established.

6. Without prejudice to the above contention, the learned Advocate for the petitioner also submitted that in case the Court comes to the conclusion about the insufficiency of the evidence in support of the claim of the petitioner regarding the bona fide need of the premises for his occupation, certainly the evidence produced on record prima facie reveal the genuineness of the claim of the petitioner and in view of the fact that the documents produced in the form of certificates being not in dispute and bearing in mind the object behind Section 13A1 of the said Act, further opportunity be given to the petitioner as well as the respondents to establish their rival contentions by leading further evidence in the matter and for that purpose the matter be remanded before the competent authority.

7. The learned Advocate for the respondents, on the other hand, submitted that the competent authority having analysed the entire evidence in proper perspective, there is no case for interference in writ jurisdiction in the impugned judgments.

8. Undoubtedly, there is no appeal against the impugned judgments. However, that by itself would not justify

interference in the impugned order by re-appreciating the entire evidence on record. Besides, the findings arrived at by the competent authority, on detail analysis of the evidence on record, disclose that apart from mere claim regarding the need of the premises for occupation of the petitioner, on the ground mentioned by the petitioner in his testimony, no efforts were made by the petitioner to produce cogent evidence in support of such ground. Undoubtedly, he has stated in his testimony, as is apparent from the impugned judgments, that he is a registered valuer and doing the work at Solapur, that he works as an instructor to the students for being admitted in the Armed Forces and he was compelled to shift his residence from Secunderabad to Solapur on account of his wife suffering from bronchial asthma caused due to pollen from cassia siamia trees. However, as regards the claim of the petitioner that he is a registered valuer and working at Solapur, or that he is an instructor to the students desirous of admission to the Armed Forces, there is absolutely no evidence produced by the petitioner in support of the said claim. Neither there is any material on record to establish that being a valuer or instructor, the petitioner is required to reside at Solapur. With reference to the claim pertaining to the allergic asthma being suffered by the wife of the petitioner, undoubtedly, two certificates were produced. However,

the petitioner has neither examined the authors of the said certificates nor has produced any other evidence in support of the claim regarding his wife suffering from bronchial asthma. The petitioner has not even examined his wife in support of such claim. Besides, the competent authority has considered both the certificates in detail. As regards the certificate issued by Dr. Niphadkar, the competent authority has clearly observed that the same nowhere discloses that the concerned doctor having taken pains to examine the petitioner's wife to ascertain whether she is really suffering from bronchial asthma as well as to ascertain whether the pollen of cassia siamia trees being the cause for the alleged asthma. So also the competent authority has observed in relation to the certificate issued by the Secretary of the society that the same is dated 16-6-1992 and it does not reveal as to how the author of the certificate knew about the suffering of the petitioner's wife prior to the said date. In other words, both the certificates which were produced by the petitioner in support of the claim that the wife of the petitioner is suffering from bronchial asthma did not establish the case of the petitioner. In short, the petitioner had not produced any evidence in support of his claim regarding the bona fide need of the premises for his occupation. Undoubtedly, the eviction was essentially sought on the ground that the wife of the

petitioner is suffering from bronchial asthma and the cause for such asthma is being the pollen of cassia siamia trees which are found in abundance at Secunderabad. Since no efforts were made by the petitioner to produce material evidence in support of such claim, no fault can be found with the impugned judgments disbelieving the petitioner in relation to his claim of bona fide need of the premises on the said ground, as already observed above. As regards the two other grounds, namely that the petitioner is a registered valuer and practices as a valuer in Solapur, and he being an instructor of the students desiring to get admission in the Armed Forces, there is no evidence no record.

9. Once it is clearly established that the petitioner has failed to place on record sufficient evidence in support of his claim, the question of remanding the matter does not arise at all. Any such remand would virtually result in allowing the petitioner to fill the lacunae in the evidence and such an exercise is not permissible, certainly not in writ jurisdiction.

10. For the reasons stated above, therefore, there is no case for interference in the impugned judgments and hence the petitions are hereby dismissed. The rule in both the petitions is discharged with no order as to

costs.